

# Staff Report 06

## APPLICANT:

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Scott Grant Douglass and Cara Eva Douglass, Co-Trustees of the Douglass Revocable Trust U/A/D June 15, 2018

## PROPOSED ACTION:

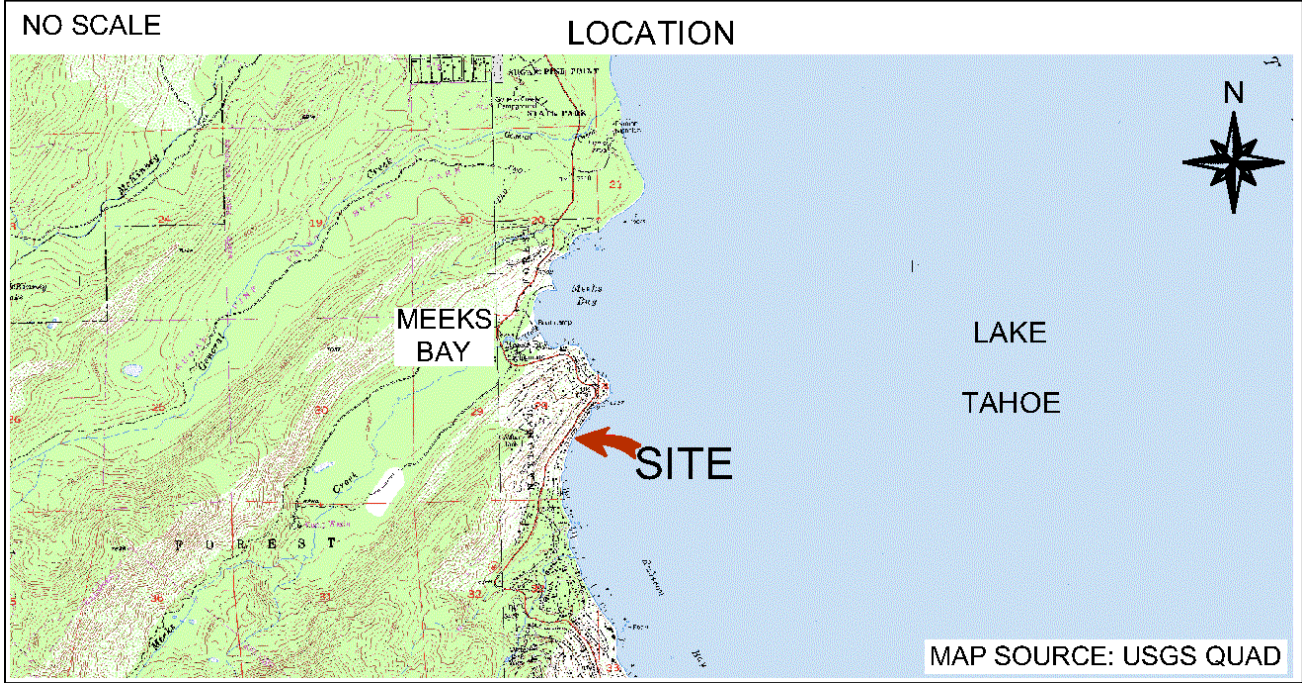
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Recission of Approval of a General Lease – Recreational Use and Issuance of a General Lease – Recreational Use.

## AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 8425 Meeks Bay Avenue, near Meeks Bay, El Dorado County (as shown in Figure 1).

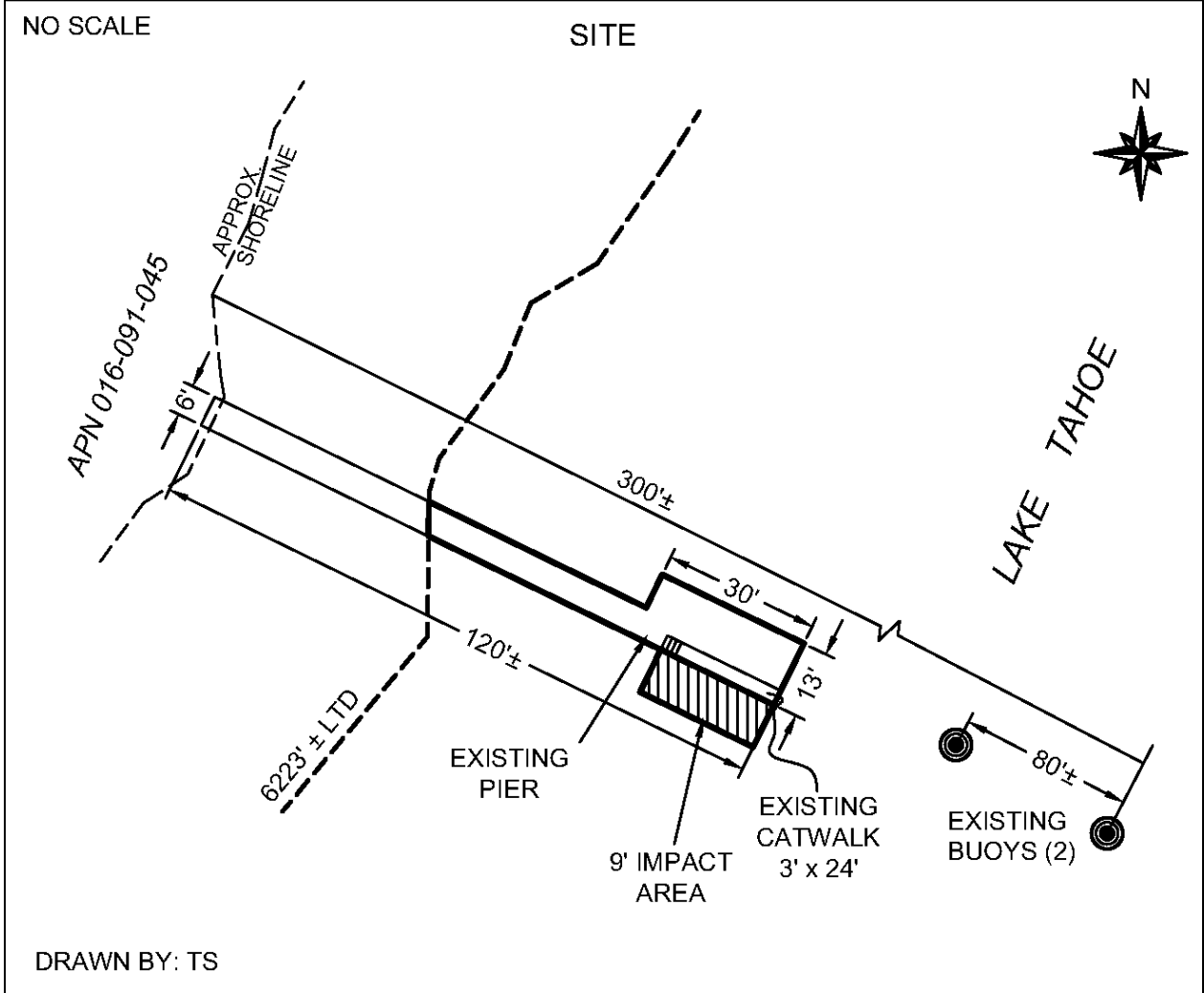
**Figure 1. Location**



**AUTHORIZED USE:**

Use of an existing pier and two mooring buoys (as shown in Figure 2).

**Figure 2. Site Map**



**TERM:**

10 years, beginning February 22, 2023.

**CONSIDERATION:**

\$1,210 per year, with an annual Consumer Price Index adjustment.

**SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee expressly acknowledges that a permit or registration from the Tahoe Regional Planning Agency (TRPA) may be required for the Authorized

Improvements and failure to obtain a permit or registration from TRPA and maintain compliance with that permit or registration may result in TRPA imposing civil penalties and will constitute a breach of this lease.

- The lease provides that signs shall be posted on each side of the pier to indicate passage and to provide continuous shoreline access to the Public Trust Easement below elevation 6228.75 feet, Lake Tahoe Datum (LTD).
- Lessee shall not store any personal items or construct any improvements in the Public Trust easement which may impair the public's right of access for navigation, fishing, and Public Trust-consistent recreational uses.
- Lessee agrees and acknowledges that the hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, 6503.5, and 6505.5; California Code of regulations, title 2, sections 2000 and 2003.

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On February 22, 2013, the Commission authorized the termination of a Recreational Pier Lease and issuance of a General Lease – Recreational Use to Scott G. Douglass; Gordon Douglass and Susan Douglass, Trustees of the Gordon and Susan Douglass Family 1983 Revocable Trust dated August 2, 1983; and Lisa S. Douglass for the use of two existing mooring buoys previously authorized by the Commission and the construction of a new pier with an adjustable catwalk ([Item C50, February 22, 2013](#)).

On April 19, 2018, the Commission authorized an Amendment of Lease and Revision of Rent that changed the Applicant's annual rent from \$2,017 to \$1,330 per year. These amendments were based on changes to the impact area for the pier ([Item C46, April 19, 2018](#)). The prior lease expired February 21, 2023.

At its meeting on February 28, 2023, the Commission authorized the issuance of a General Lease – Recreational Use to Scott G. Douglass; Gordon Douglass and Susan Douglass Trustees of the Gordon and Susan Douglass Family 1983 Revocable Trust dated August 2, 1983; and Lisa S. Douglass ([Item 17, February 28, 2023](#)). After final lease documents were sent out, staff was informed that there was different ownership interest in the upland property.

On February 8, 2021, ownership interest in the upland property was transferred from Scott G. Douglass; Gordon Douglass and Susan Douglass, Trustees of the Gordon and Susan Douglass Family 1983 Revocable Trust Date August 2, 1983; and Lisa S. Douglass to Scott Grant Douglass and Cara Eva Douglass, Co-Trustees of the Douglass Revocable Trust U/A/D 06/15/2018, and Lisa S. Douglass.

On May 11, 2023, Lisa S. Douglass transferred ownership interest to Scott Grant Douglass and Cara Eva Douglass, Co-Trustees of the Douglass Revocable Trust U/A/D June 15, 2018.

Due to the change in ownership, staff is recommending the rescission of the February 28, 2023 approval of a General Lease – Recreational Use, and the issuance of a new General Lease – Recreational Use that reflects the change in ownership.

The Applicant is applying for a General Lease – Recreational Use for the use of the existing pier and two mooring buoys. On January 20, 2023, the Applicant registered the two mooring buoys with TRPA (Registration No. 10638).

The subject pier and mooring buoys are privately owned and maintained and facilitate recreational boating. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land. (Pub. Resources Code, § 6503.5.)

The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake. The subject pier is built on pilings with the area immediately upland of the pier being flat and sandy with large rocks scattered near the pier. The immediate upland topography is relatively easy to traverse, with public access for pedestrians and lake-related activities available at varying water levels by passing underneath the pier.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land and restore the lease premises to their original condition.

The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

## **CLIMATE CHANGE:**

Climate change significantly affects inland non-tidal lakes such as Lake Tahoe. The frequency and severity of natural disasters like flooding, wildfire, drought, extreme heat, and storms are increasing throughout the state of California, including the Sierra Nevada mountains, and will continue to accelerate through the end of the century. Structures along the shores of inland lakes are particularly vulnerable to the more frequent and extreme weather events and shifts in seasonal characteristics.

According to [California's Fourth Climate Change Assessment](#), released in 2018, the most significant impacts of climate change in the Sierra Nevada Region are more intense heat, precipitation extremes, declining snowpacks, and changes in streamflow timing. The long-term warming trend will lead to warmer and shorter winters, and longer and dryer summers. Successive dry and warm winters are resulting in minimal snowpack, increased winter stream flows and floods, and decreased spring and summer runoff. Prolonged low lake levels will become normal. Low lake level conditions can create more expansive beaches and increased shoreline access in dry months. However, these conditions interfere with boat launching and mooring facilities. This impact is most noticeable where the facilities are sited on shallow, low gradient lake bottom locations.

Dry winters will be punctuated with exceedingly wet years where prolonged and excessive precipitation can produce flash floods. High precipitation in these years will result in higher lake levels, causing beaches to narrow and reducing public access. Extra saturation of the soil can increase erosion, especially following intense wildfire seasons. Surface runoff water may carry more sediment into the lake, adversely impacting water quality and clarity.

Climate change may also lead to more intense and unpredictable weather events and winds. These storms may deviate from prevailing wind patterns for the region. These winds can accelerate shoreline erosion in some areas or cause erosion in areas not typically subject to erosion. Additionally, these winds can increase wave damage on structures and boats along the lake.

Improvements authorized under this lease may require more frequent inspection and maintenance to ensure they are not displaced during severe weather events. Watercraft moored to buoys, piers, or docks are also vulnerable to damage from high wind events and excessive waves.

## **CONCLUSION:**

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the

foreseeable term of the proposed lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

## **OTHER PERTINENT INFORMATION:**

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1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application the Applicant may be required to remove the existing pier and two mooring buoys and return the premises to their original condition. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Recission of the lease is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084, California Code of Regulations, title 14, section 15300, and California Code of Regulations, title 2, section 2905.

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

**AUTHORIZATION:**

1. Authorize the rescission of the Commission's February 28, 2023 approval of a General Lease – Recreational Use.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 22, 2023, for a term of 10 years, for use of an existing pier and two mooring buoys; annual rent in the amount of \$1,210, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.